

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(GO. Rt. No. 232/Lab/AIL/J/2012, dated 24th December 2012)

NOTIFICATION

Whereas, the award in I.D. No. 79 of 2012, dated 29-10-2012 of the Labour Court (Mahe Camp), Puducherry in respect of the industrial dispute between the management of M/s. Mahe Service Co-operative Bank Limited, Mahe and Tmt. K. Seetha over termination of her services has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O.Ms.No.20/9/Lab/L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY
(AT MAHE CAMP)

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Monday, the 29th day of October 2012

I.D. No. 79/2012

K. Seetha,
Ashirvad, Chalakkara P.O.,
New Mahe

.. Petitioner

Versus

The President,
Mahe Service Co-operative
Bank Limited, Mahe

.. Respondent

This industrial dispute coming on this day for final hearing before me in the presence of Thiruvalargal A.P. Ashokan and M.I. Suresh Kumar, Advocates for the petitioner, Thiru O.G. Premarajan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G. O. Rt. No.119/AIL/Lab./J/2008, dated 4-7-2008 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Tmt. K. Seetha against the management of M/s. Mahe Service Co-operative Bank, Mahe over termination of her services is justified or not?

(2) To what relief, the petitioner Tmt. K. Seetha is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in her claim statement, has averred as follows:

The petitioner was joined in the respondent bank as Junior Clerk/Cashier on 17-8-1994 and she has not been issued with any written order of appointment for the said post and she was transferred to various branches. In August 2003, the respondent bank was opened at Mahe and the petitioner was directed to work as Accountant in the place of one Pratheepan, who was transferred to Evening Branch as Manager in-charge.

The petitioner requested for the order of appointment, but no posting order was issued to her. At the time of working as Clerk, the basic salary of the petitioner was ₹ 2,800 and she got ₹ 500 extra while she was working as Accountant. Hence, the petitioner asked for higher salary before the respondent management. The Vice-President asked the petitioner to say apology to the President for her misbehaviour. But the petitioner expressed her unwillingness to do so, as there was no misbehaviour on her part. Hence, the President and the Vice-President had become an enimical terms with the petitioner.

The petitioner while continuing in service as Accountant, she was served with a charge-memo containing baseless and fabricated allegations and then conducted a domestic enquiry and the President of the respondent bank imposed the punishment of depromotion to the lower post, withholding of three increments and transferred to another branch. Then consequent of revocation of suspension, the petitioner joined for duty on 1-3-2004 and applied for leave on the ground of illness. Then following a memo No. MS CB 1329/04-5 issued by the President of the bank, dated 30-4-2004, the petitioner expressed her willingness to join duty and made a request to permit her to join duty. But the President refused to permit the workman to join duty. In the meantime, the petitioner filed a writ petition No. 9677/2005 before the High Court, Madras, challenging the order of the President. The Hon'ble High Court, Madras disposed of the said writ petition granting the petitioner liberty to prefer appeal as per the relevant rules and regulations under Pondicherry Co-operative Societies Act. The petitioner preferred an appeal before the Board of Directors of Mahe Service Co-operative Bank against the order of

the President. After disposal of the writ petition, the President with a view to continue the non-employment of the petitioner, fabricated the charge of unauthorised absence and connected charges against the petitioner *vide* charge-memo dated 3-3-2007. The petitioner duly submitted an explanation dated 19-3-2007 to the charge-memo explaining that there was not any kind of unauthorised absence on her part, but the President of the respondent bank refused to permit her to join duty. Hence, she filed the present industrial dispute.

3. In the counter statement, the respondent has stated as follows:-

On 14-10-2003 at about 11.00 a.m. the petitioner entered into the chamber of Somasundaram, who was the then President of the bank and abused him in a filthy language. A show cause notice dated 16-10-2003 was issued and she was suspended from service with effect from 1-11-2003. Then the domestic enquiry was conducted and imposed penalty on the basis of the enquiry report. The punishment was not challenged by the petitioner and it has become final.

The petitioner submitted a leave application on 1-3-2004 with a request to grant leave for 15 days on medical grounds. Since no medical certificate was submitted along with the application for leave, the same was refused. On 16-3-2004 the petitioner submitted another application for leave to extend her leave for 15 days from 17-3-2004. The petitioner submitted another application on 31-3-2004 to grant leave for one month from 31-3-2004. The prime fact to be noted is that she has no leave in her credit to avail leave on medical grounds. Hence, the respondent bank intimated the petitioner that staying away from the duty shall be treated as unauthorised absence and she was served with a letter dated 30-4-2004 calling upon her to give explanation for not joining on duty. In the reply, the petitioner has stated that she will not join duty till the disposal of the writ petition, which she has filed before the Hon'ble High Court, Madras.

Since the petitioner has not reported for duty for long period in spite of several communications, charges were framed, enquiry was conducted and based on the enquiry report, she was terminated from service. All possible opportunities were given to the petitioner in the enquiry. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, WW.1 was examined and Ex.W1 to Ex.W10 were marked. On the side of the respondent, PW1 was examined and Ex.P1 was marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

The contention of the petitioner is that due to the misunderstanding between her and the President and Vice-President of the respondent bank, she was terminated from service.

7. *Per contra*, the contention of the respondent is that the petitioner was unauthorisedly absent for long time and hence she was terminated from service after conducting the domestic enquiry.

8. In order to prove her case, the petitioner was examined as WW1 and through her, Ex.W1 to Ex.W10 were marked. On the side of the respondent, one Balakrishnan, Advocate, who conducted the domestic enquiry was examined as RW1 and through him, Ex.R1 was marked. While the matter was posted for cross-examination of RW1, both parties filed a Joint Compromise Memo stating that the respondent management has agreed to reinstate the petitioner into service on 1-11-2012 with continuity of service and limiting the back wages to rupees two lakhs. The Joint Compromise Memo is recorded.

9. Accordingly, the industrial dispute is closed and the award is passed as per the Joint Compromise Memo of settlement filed by both parties jointly. The said Joint Compromise Memo shall form part of the award. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 29th day of October, 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for the petitioner:

WW1 — 15-11-2011 - K. Seetha

List of witnesses examined for the respondent:

RW1 — 11-7-2011 - Balakrishnan

List of exhibits marked for the petitioner:

Ex.W1 — Service conditions of the employees

Ex.W2 — Acknowledgement card

Ex.W3 — Acknowledgement card

Ex.W4 — Copy of the letter, dated 23-6-2007 sent by the petitioner

Ex.W5 — Copy of the letter, dated 29-3-2007 sent by the petitioner

Ex.W6 — Copy of the letter, dated 16-5-2007 sent by the petitioner to the Assistant Inspector of Labour-cum-Conciliation Officer

Ex.W7 — Notice, dated 19-7-2007 by Conciliation Officer to the petitioner and the respondent.

Ex.W8 — Copy of the notice, dated 14-8-2007 sent by the Conciliation Officer.

Ex.W9 — Copy of the letter sent by the petitioner

Ex.W10 — Copy of the letter sent by the petitioner

List of exhibits marked for the respondent:

Ex.R1 — Copy of domestic enquiry report

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 233/Lab./AIL/J/2012, dated 24th December 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 20 of 2010, dated 28-9-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pondicherry Institute of Medical Sciences, Puducherry and its workman Thiru D. Upendiran over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab/L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Friday, the 28th day of September, 2012

I.D. No. 20/2010

D. Upendiran
22, Murugan Koil Street,
Pillaichavadi, Puducherry . . . Petitioner

Versus

The Personnel Manager,
Pondicherry Institute of Medical Sciences,
Kalapet, Puducherry . . . Respondent

This industrial dispute coming on 27-9-2012 for final hearing before me in the presence of Thiru K. Subramaniam and Mrs. S. Manjula, Advocates for the petitioner, Thiruvalargal L. Sathish, N. Krishnamurthy, T. Pravin and V. Veeraragavan, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, vide G.O. Rt. No.92/AIL/Lab./J/2010, dated 6-5-2010 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, viz.,

(1) Whether the dispute raised by Thiru D. Upendiran against the management of M/s. Pondicherry Institute of Medical Sciences, Puducherry over non-employment is justified or not?

(2) If justified, what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was in the employment of respondent hospital having joined as Ward Boy on 19-3-2002 in terms of an Appointment Order, dated 15-3-2002 and have successfully completed one year of service. On 9-10-2003 the petitioner was orally informed by his supervisor by name Mrs. Telipushpam that he need not come to work from the next day. When the petitioner asked her the reason, she informed him that no reason need to be given and his services are not required. Then the petitioner was going to PIMS Office daily for seeking work, but he was not given work. This had happened nearly one or two years. Then the petitioner had no other alternative than to file a complaint before the Labour Officer, Puducherry for his non-employment.

The respondent management had stated in their letter, dated 11-11-2009 to the Labour Officer that the petitioner was absent from June 2002 during the period of contract and his name was deleted from the duty register and salary list. The said averments are false and he was not employed as a contract work, but as a regular staff of PIMS.

If it is presumed that the petitioner's termination was a retrenchment under section 25 F of Industrial Disputes Act applies, the conditions stipulated thereunder were not followed. The petitioner's juniors

are still in service and employed and no retrenchment compensation or notice pay as per law was paid. Therefore, it cannot be a retrenchment and also unlawful as no notice of pay nor compensation was paid to the petitioner. Hence, this industrial dispute is filed for his reinstatement with other benefits.

3. In the counter statement, the respondent has stated as follows:-

According to the own averments of the petitioner, he was terminated from service on 9-10-2003, whereas, he approached the Conciliation Officer only on 20-8-2009 after a delay of six years, which by itself will disentitle him to seek any relief. The fact that the petitioner had abandoned his services on his own accord due to his unauthorised and chronic absence in a short span of time he was employed with the respondent further proves that the petitioner never had any interest in the job of the respondent and has filed the present case only to extract money from the respondent.

The truth of the matter is that the petitioner joined the respondent institution as Ward Boy for a period of one year on contract basis *vide* Appointment Order, dated 15-3-2002 and right from the beginning, he was careless, lethargic and was chronic absentee, even before completing three months of his service and he failed to report duty from June 2002 without any intimation.

Further the petitioner did not work continuously for 240 days in respondent's institution and hence the petitioner is not entitled to any relief such as retrenchment compensation or notice pay. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 to PW.3 were examined and Ex.P1 to Ex.P11 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R3 were marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

The main contention of the petitioner is that he was working as Ward Boy in the respondent company from 19-3-2002 in terms of Appointment Order, dated 15-3-2002 and the respondent management terminated him from service without any reason and he was going to respondent company for seeking work, but he was not given work.

7. *Per contra*, the contention of the respondent is that the petitioner joined the respondent institution as Ward Boy for a period of one year on contract basis *vide* Appointment Order, dated 15-3-2002 and right from the beginning, he was careless, lethargic and was

chronic absentee, even before completing three months of his service and he failed to report duty from June 2002 without any intimation.

8. Heard both sides. Perused the case records. There is no dispute that the petitioner was working as Ward Boy in the respondent hospital from 19-3-2002. The petitioner has marked the copy of the Appointment Order, dated 15-3-2002 issued by the respondent to him as Ex.P1. A perusal of Ex.P1 reveals that he was appointed as a Ward Boy on contract for a period one year. Ex.P2 is the copy of the identity card of the petitioner issued by the respondent hospital, Ex.P3 to Ex.P5 are the copy of the pay slip for the month of March 2002, April 2002 and May 2002 respectively. Hence, the petitioner has established that he was working as Ward Boy in the respondent hospital from 19-3-2002.

9. In order to prove his case, the petitioner examined himself as PW.1. PW.1 in his evidence has deposed that his service was terminated by the respondent without any reason. On the other hand, the respondent has stated that the petitioner has failed to report to duty from June 2002 *i.e.* within three months from the date of his employment without any intimation and hence he was considered to have abandoned his job and his name was removed from rolls. On the side of the petitioner, one Karan and one Doureradjon were examined as PWs.2 and 3 respectively and they deposed that they are employees with the respondent hospital and they know the petitioner and they aware of the present industrial dispute

10. According to PW1, he was terminated from service in October 2003. But on perusal of records, it is seen that the petitioner has approached the Conciliation Officer only on 20-8-2009 after a period of 6½ years. There is no plausible explanation from the petitioner for such long delay in approaching the Conciliation Officer. Though the Industrial Disputes Act does not prescribes any specific time limit for initiating proceedings before the Conciliation Officer, the petitioner must come up with the plausible explanation for such delay in approaching the authorities, when the case of the respondent is that the petitioner had abandoned his job in 2003 due to lack of interest.

11. PW.1 has further stated in his evidence that he was going to PIMS office daily for seeking work, but he was not given work and this had happened nearly one or two years and then the petitioner had no other alternative than to file a complaint before the Labour Officer, Puducherry for his non-employment.

12. If the said evidence of PW.1 that he was going to PIMS office daily for seeking work for nearly two years, why he has not approached the Conciliation Officer after the said two years is not explained by the

petitioner. Further there is no evidence produced on the side of the petitioner to prove his said contention. Apart from the above, there is no letter sent to the respondent office seeking for his job and he suddenly approached the Conciliation Officer after 6½ years from the date of his termination, which creates doubt that he was not interested in the employment offered by the respondent and consequently I feel that the petitioner would have left the service for other avocation.

13. The contention of the petitioner is that he was working as an employee in the respondent hospital for one year and if it is presumed that the petitioner's termination was a retrenchment, section 25 F of Industrial Disputes Act applies the conditions stipulated thereunder were not followed.

14. Whereas, the respondent has stated that the petitioner was working with his hospital for 13 days in March 2002, 30 days in April 2002 and 30 days in May 2002 totally 73 days and all rights under the Industrial Disputes Act or the Industrial Employment Standing Order's Act flows to worker only on completion of 240 days of work in the preceding year and even section 25 F of Industrial Disputes Act can be invoked only on completion of 240 days of continuous service in the preceding year. In order to support his claim, he relied upon the following decisions:-

1963 AIR 1914:

Sur Enamel and Stamping Works (P) Ltd., Vs. Their Workmen:

"Under section 25 F of the Act only a workman, who has been in continuous service for not less than one year under an employer, is entitled to its benefit. Before a workman can be considered to have completed one year of continuous service in an industry, it must be shown first that he was employed for a period of not less than 12 calendar months and next that during those 12 calendar months, he had worked for not less than 240 days. It was further held that a workman, who has not at all been employed for a period of 12 months, would not satisfy the requirements of section 25 B of the Act and would not be entitled to the benefit under section 25 F of the Act.

CDJ 2008 MHC 3631 (DB):

A.V. Rajan Vs. The Presiding Officer, Labour Court & Another:

In order to construe that the workman has completed one year of continuous service under the management, firstly, it must be shown that he was employed for a period of not less than 12 calendar months and next, during those 12 calendar months, he had worked for not less than 240 days.

...But nowhere in the petition, he stated that he worked for 240 days in continuous service within the meaning of section 25-B. Besides, the appellant has not adduced any evidence to show that he worked for twelve months preceding the date of retrenchment. The mere averment in the affidavit that he continuously worked for more than fourteen years would not satisfy the requirement of 'continuous service', within the meaning of section 25-B. Even if the period for which the appellant is alleged to have worked is taken into account as mentioned in his affidavit, still the appellant has not fulfilled the requirement of completion of 240 days of continuous service."

15. It is not in dispute that the petitioner was a workman under the respondent hospital. But the only controversy is, whether the petitioner was in continuous service to attract the provisions of section 25-F of the Industrial Disputes Act. On the side of the petitioner, his pay slip for the month March 2002 was marked as Ex.P3, April 2002 as Ex.P4, May 2002 as Ex.P5 and subsequently after one year from the date of marking of Ex.P3 to Ex.P5, the petitioner has produced the pay slip for the month of July 2003 as Ex.P10 and August 2003 as Ex.P11, which were marked on objection. The learned counsel for the petitioner has submitted that Ex.P3 to Ex.P5 and Ex.P10 and Ex.P11 would clearly prove that the petitioner has completed 240 days of service in the respondent institution.

16. The learned counsel for the respondent would submit that the petitioner was working as an employee with the respondent only for 73 days and thereafter he did not report to duty. He further submitted that originally the petitioner has filed his salary receipts for the month of March, April and May 2002, and when the matter was reserved for orders, the petitioner filed two additional documents claiming it to be the pay slips issued by them to him for the month of July and August 2003. The learned counsel for the respondent further submitted that in April 2002 the respondent hospital allotted employment numbers to each of their employees and as such the petitioner was given the employment No. 301, P.F. Code No. 0226 in May 2002, which is reflected in his salary slip for May 2002, but in Ex.P10 and Ex.P11, which are produced by the petitioner now, claiming him to be pay slip issued by them for the month of July and August 2003, the employment code number is mentioned as 1256 and PF code is mentioned as 0869 and on verifying their records, it is seen that the salary slips produced by the petitioner in Ex.P10 and Ex.P11 have been manipulated by him as the employment No. 1256 and PF Code No.0869 relates to one Aleyamma Gilbert, who is working as P.A. to Manager, Administration and it does not relates to the petitioner at all and the petitioner has created a fraudulent salary receipt in Ex.P10 and Ex.P11 and has produced the same before this court to claim that he worked for 240 days in their institution.

17. RW1 has produced and marked the printed copy of the entries pertaining to the petitioner with all his particulars as Ex.R1 and the similar entry pertaining to Aleyamma Gilbert with employment No. 1256 as Ex.R2 and the PF Contribution statement maintained by the respondent management for the month of July 2002 as Ex.R3.

18. A perusal of Ex.R1 reveals that the employee number of the petitioner is mentioned as 0301 and for the said Gilbert, it is mentioned as 1256, as could be seen from Ex.R2. On perusal of Ex.P10 and Ex.P11, which have been marked on the side of the petitioner, it is seen that the employee number of the petitioner is mentioned as 1256, which has been allotted to the said Gilbert, as found in Ex.R2. Hence, it is established by the respondent that the Human Resources Entry of the said Gilbert has been manipulated by inserting the name of the petitioner and the same has been produced and marked before this court on objection as Ex.P10 and Ex.P11. Further a perusal of Ex.P3 PF Contribution Statement reveals that no contribution was paid to the petitioner for the month of July 2002 and it is clearly established that the petitioner abandoned his services from July 2002 onwards. Under these circumstances, I feel that Ex.P10 and Ex.P11 are the forged documents which have been created for the purpose of this case to claim that he has completed 240 days of service in the respondent institution and hence it cannot be taken into consideration.

19. Ex.P3 to Ex.P5 are not sufficient to show that the petitioner put in continuous service for not less than one year. Apart from Ex.P3 to Ex.P5, there is no other reliable document filed on the side of the petitioner to show that he was in continuous service for not less than one year. Unless the petitioner proves that he has completed 240 days of continuous service with the respondent, he cannot claim any benefits under section 25 F of Industrial Disputes Act. In the absence of any such evidence, the petitioner is not entitled to get any benefit under section 25 F of Industrial Disputes Act.

20. The learned counsel for the petitioner has submitted that the petitioner was working as Ward Boy in the respondent hospital on regular basis and he has been terminated from service without any enquiry.

21. The learned counsel for the respondent has submitted that Ex.P1 clearly shows that the petitioner was engaged on contract for one year on probation and during the said period, his job was terminable without notice and in case of workers employed for specified period on contract and only on probation, their service can be terminated in terms of contract either on completion of contractual period or even prior to that. In order to support his contention, he relied upon the following decisions:-

AIR 2001 SC 2681:

Harmohinder Singh Vs. Kharga Canteen. Ambala Cantt.:

“The argument on the basis of section 25 F is equally misconceived. This section deals with conditions precedent to retrenchment of workmen. It would not apply to para 3-A because of the definition of retrenchment in section 2(oo)(bb) which expressly excludes “termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained thereon.”

AIR 2002 SC 300:

Kalyani Sharp India Ltd. Vs. Labour Court No.1, Gwalior:

“The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end to at any time without assigning any reason whatsoever and his services could be regularised only on satisfactory completion of his training. If these clauses are read together it is clear he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a Trainee Service Technician and for a period he had to undergo the training to the satisfactory during that period the facility could be withdrawn at any time and he would be regularised only on completion of his training. Thus the respondent's services were terminated before expiry of the probationary period. In such a case question of issue of notice before terminating the service as claimed by the respondent does not arise.”

CDJ 2005 SC 604 SC:

Rajasthan State Road Transport Corporation & Others Vs. Zakir Hussain:

“Termination of Probation Simpliciter - Maintainability of Suit - The respondent is a temporary employee of the Corporation and a probationer and not a Government servant and therefore, is not entitled for any protection under Article 311 of the Constitution. He was a party to the contract. In view of the fact that the respondent was appointed on probation and the services were terminated during the period of probation simpliciter as the same were not found to be satisfactory, the appellant-corporation is not obliged to hold an enquiry before terminating the services. The respondent being a probationer has got no substantive right to hold the post and was not entitled to a decree of declaration as erroneously granted by the lower courts and also of the High Court”

22. The learned counsel for the respondent further submitted that the petitioner was never terminated by the respondent for any misconduct and no stigma was cast upon him for his absence and he was considered to have abandoned his job due to his long absence and therefore, his name was removed from the roll and such action need not precede with domestic enquiry. He further submitted that the law is settled that only if punitive action is to be taken by the management, the worker needs to be given an opportunity to prove his innocence in a domestic enquiry and if no punitive action is contemplated, no enquiry is required. In order to support his contention, he relied upon the following decision:-

AIR 1980 SC 1242:

Oil and Natural Gas Commission Vs. Dr. Md. S. Iskander Ali:

“Where the short history of the service of the probationer appointed in the temporary posts clearly showed that his work had never been satisfactory and he was not found suitable for being retained in service and that was why even though some sort of an enquiry was started, it was not proceeded with and no punishment was inflicted on him and in these circumstances, if the appointing authority considered it expedient to terminate the services of the probationer it could not be said that the order of termination attracted the provisions of Article 311, when the appointing authority had the right to terminate the service without assigning any reasons. In such a case even if misconduct, negligence, inefficiency might be the motive or the inducing factor which influenced the employer to terminate the services of the employee a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service, termination of service could not be termed as penalty or punishment. Further adverse remarks in the assessment roll and recommendation therein to extend the probationary period could not be said to indicate that the intention of the appointing authority was to proceed against the employee by way of punishment.

23. A perusal of Ex.P1 reveals that the petitioner was appointed as a Ward Boy in the respondent hospital on contract basis for a period of one year. In Ex.P1 it is also mentioned that if the conduct and performance of the petitioner are not found satisfactory during the period of probation, his services are liable to be terminated without any notice. Accepting the above terms and conditions, the petitioner has joined duty in the respondent hospital and since he has not turned

up for duty, his name was removed from the rolls. In a case of a probationer or a temporary employee, who has no right to the post, such a termination of his services is valid and does not attract the provisions of Article 311 of the Constitution. As already stated the petitioner was a contract labour for a period of one year and he did not turn up for work after three months and hence the name of the petitioner was removed from the rolls during the period of probationary period. In the above circumstances, there is no need to conduct the domestic enquiry, as stated by the petitioner. Hence, for the foregoing reasons, I feel that the present industrial dispute filed by the petitioner cannot be allowed. Accordingly, this point is answered.

24. In the result, the industrial dispute is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 28th day of September 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for the petitioner:

- PW1 — 13-10-2011 -Upendiran
- PW2 — 1-12-2011-Karnan
- PW3 — 8-12-2011 - Doureradon

List of witnesses examined for the respondent:

- RW1 — 30-1-2012 - Ralph Mathews

List of exhibits marked for the petitioner:

- Ex.P1 — Appointment letter, dated 15-3-2002 issued to the petitioner.
- Ex.P2 — Copy of the Identity card of the petitioner issued by the respondent.
- Ex.P3 — Pay slip of the petitioner for the month of March 2002.
- Ex.P4 — Pay slip of the petitioner for the month of April 2002.
- Ex.P5 — Pay slip of the petitioner for the month of May 2002.
- Ex.P6 — Copy of the letter by the petitioner to the respondent management.
- Ex.P7 — Copy of the letter, dated 11-11-2009 sent to the Labour Officer.
- Ex.P8 — Copy of the failure report, dated 12-4-2010
- Ex.P9 — Copy of the notification, dated 6-5-2010
- Ex.P10 — Pay slip of the petitioner for the month of July 2003 (on objection).
- Ex.P11 — Pay slip of the petitioner for the month of August 2003 (on objection).

List of exhibits marked for the respondent:

- Ex.R1 — Copy of the HR entry in respect of Upendiran.
- Ex.R2 — Copy of the HR entry in respect of Aleyamma Gilbert.
- Ex.R3 — Copy of the particulars of P.F. contribution list

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(GO. Rt. No. 234/Lab./AIL/J/2012, dated 24th December 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 21 of 2010, dated 23-7-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Packaging India Pvt. Limited, Puducherry and its workman Thiru V.V. Soundararajan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Monday, the 23rd day of July, 2012

I.D. No. 21/2010

V.V. Soundararajan .. Petitioner

Versus

The Managing Director,
Packaging India (P) Limited,
Pillaiyarkuppam, Puducherry. .. Respondent

This industrial dispute coming on 26-6-2012 for final hearing before me in the presence of Thiruvalargal L. Sathish, N. Krishnamurthy and T. Pravin, Advocates for the petitioner, Thiru L. Swaminathan and Thiru Ilankumar, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 78/AIL/Lab./J/2010, dated 27-4-2010 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru V.V. Soundararajan against the management of M/s. Packaging India Private Limited, Puducherry over his non-employment is justified or not?

(2) If justified, what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner worked with the respondent as a permanent worker from 19-8-1998 to 4-10-2008 as Turner and Operator and his last drawn wages was ₹ 10,545. On 4-10-2008 the petitioner was prevented from entering into factory premises and he was informed by the Security Guards that he is suspended from duty. He was not assigned any reasons for his suspension on 4-10-2008. On 6-10-2008 the petitioner received a suspension order dated 4-10-2008, wherein he was accused of neglect in discharge of duties, abuse of superior officer, wilful subordination etc. The petitioner gave his explanation to the suspension order dated 4-10-2008 on 10-10-2008, stating that he has not committed any misconduct as alleged by the respondent.

The petitioner was charge sheeted on 8-11-2008 and the domestic enquiry was fixed on 27-11-2008 at the residence of the Enquiry Officer at Lawspet, Puducherry, which is more than 30 kms. From the place of his residence and on 20-12-2008 the Enquiry Officer set the petitioner *ex parte* and recorded the evidence of the management witnesses and held the petitioner guilty of the charges levelled against him. Based on the enquiry report, the respondent dismissed the petitioner from service *vide* its order dated 9-2-2009. The Enquiry Officer did not adhere to the basic and fundamental elements of a fair enquiry proceedings and acted as a mere mouth piece of the management. Further the punishment of

dismissal for the alleged misconduct, even if it is deemed to have been proved, is shockingly disproportionate to appeal the conscience of prudent man. Hence, this industrial dispute is filed to reinstate him with other benefits.

3. In the counter statement, the respondent has stated as follows:-

The petitioner was suspended from service in contemplation of disciplinary proceedings through order of suspension dated 4-10-2008. Followed by the order of suspension, the petitioner was served with a charge sheet and was directed to explain in writing within 48 hours from the date of receipt of the charge sheet. The petitioner had submitted the written explanation on 11-11-2008 by making unwarranted, untenable and baseless allegations against the management in general. Since the explanation given by the petitioner was not satisfactory, the respondent management decided to conduct the enquiry and accordingly, the Enquiry Officer was appointed and the same was informed to the petitioner.

On 27-11-2008 the petitioner appeared in the enquiry proceedings and submitted two letters dated 27-11-2008 seeking for 15 days for engaging co-employee and another one, requesting for conduct of enquiry nearer to his residence and then the enquiry was adjourned to 20-12-2008. Since the petitioner has not appeared in the enquiry proceedings, he was set *ex parte* and recorded the depositions of the management witnesses. The Enquiry Officer after analyzing the deposition of the witnesses submitted his enquiry report, holding that the charges against him were proved. After subjective satisfaction of the enquiry report, dated 2-1-2009, the management had directed the petitioner by its show cause memorandum, dated 12-1-2009 to submit his explanation. The petitioner requested for extension of time for 15 days *vide* letter, dated 13-1-2009 and requested for another 15 days, when his earlier letter, dated 13-1-2009 was already under consideration. However, the petitioner was given time for three days up to 24-1-2009 to submit his written explanation. Then the petitioner had addressed a letter, dated 12-1-2009 to the Enquiry Officer to re-open the enquiry proceedings, which was rejected by the respondent management. On 24-1-2009 the petitioner had submitted his written explanation to the show cause, dated 12-1-2009 making false allegations against the management. The management rejected the written explanation through a detailed speaking order of dismissal, dated 9-2-2009. Hence, the petitioner was afforded with full opportunity to participate in the enquiry proceedings and the petitioner was only concentrating on making unwarranted and imaginary allegations against the

respondent management and never behaved as an employee. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, no oral evidence was adduced and marked Ex.P1 to Ex.P38. On the side of the respondent, no oral evidence was adduced and Ex.R1 to Ex.R21 were marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

The main contention of the petitioner is that he was working as permanent worker in the respondent company as Turner and Operator from 19-8-1998 to 4-10-2008 and his last drawn wages was ₹ 10,545 and on 4-10-2008 he was prevented from entering into the factory premises and he was informed by the Security Guards that he was suspended from duty. In order to support his claim, the petitioner has marked the copy of the appointment order and copy of the pay slip as Ex.P1 and Ex.P2 respectively. A perusal of these documents reveals that he was a worker under the respondent company and his pay in the month of August 2008 was ₹ 11,124.

7. It is the further contention of the petitioner that he was not assigned any reasons for his suspension on 4-10-2008.

8. *Per contra*, the contention of the respondent is that he was suspended from service in contemplation of disciplinary proceedings through order of suspension dated 4-10-2008. According to the respondent, the petitioner was served with a charge sheet dated 8-11-2008 and was directed to explain in writing within 48 hours from the date of receipt of the said charge sheet. The copy of the charge sheet was marked on the side of the petitioner as Ex.P8. As per Ex.P8, the petitioner has committed the following misconducts:-

(i) Insubordination or disobedience, or instigation thereof whether alone or in combination with another of any lawful and reasonable order of the superior.

(ii) Subject to the provisions of this standing orders and laws in force, refusal to accept a charge sheet or order or other communication in writing served by the company.

(iii) Negligence or neglect of work.

(iv) Loitering, leaving the work spot without permission or wasting time during working hours.

(v) Conduct prejudicial to the interest of the company.

9. For the said charge sheet under Ex.P8, the petitioner had given reply under Ex.P9 that he had not committed any misconduct and infact his superiors had used filthy language as against him and the chief operating officer and other officers Saravanan and Bakthavatchalam had slapped him on his cheek and while he raised hues and cries and was running outside, they kicked him on his stomach. If the said version is found to be true, nothing is prevented to the petitioner to report in writing about the incident to the management or took any medical leave after the said incident. But he has not produced any document to prove the said fact. Hence, this court has come to the conclusion that the petitioner by way of an after thought, had narrated a fanciful tale in his written explanation to achieve unlawful gains from the respondent management. Further no documents were submitted along with the written explanation, dated 11-11-2008 pertaining to lodging of any criminal complaint against the officials of the respondent management.

10. In the said explanation given by the petitioner, it has been stated that the printing ink/chemicals had splashed into his eyes and all over his body when he was performing his duty under the instructions of the superior on 22-9-2008 during the second shift. On the side of the petitioner, the copy of the prescriptions issued by the Medical Officers were marked as Ex.P3 series. But nothing was mentioned in the said prescriptions about the said incident. Hence, mere prescriptions are not sufficient to support the said claim of the petitioner.

11. In this regard, the learned counsel for the respondent has submitted that the respondent management is having an emergency vehicle to proceed to Krishna Hospital, Cuddalore immediately for any injury arising out of and in the course of employment and the security attached to the respondent management is having a separate register to enter the name of the injured employee when any employment injury takes place and the name of the claim petitioner was not found in the said register either on 22-9-2008 or on 23-9-2008.

12. If the allegations of the petitioner was found to be true, he had neither reported in writing about the incident nor took any medical leave after the said incident. But as already stated, the petitioner has not produced any records to prove his claim.

13. The learned counsel for the petitioner has submitted that the charges of wilful subordination on 22-9-2008 are also vague and uncertain to say the least and it is claimed that the petitioner shouted against the superior officer in a filthy language and also threatened him of dire consequences, but the show cause notice is silent regarding

(a) the name of the superior officer at whom the petitioner shouted and used filthy language.

(b) the exact words used by the petitioner, which was considered to be filthy and obnoxious.

(c) whether any written complaint was given by the superior officer and when it was given.

(d) why the respondent took 12 days from the date of alleged incident to issue suspension order and show cause notice.

(e) the list of witnesses and the list of documents based on which the respondent proposed to prove the misconduct of the petitioner.

The learned counsel for the petitioner further submitted that the entire domestic enquiry conducted by the Enquiry Officer was a mere eye-wash, an empty formality to satisfy the mandatory legal requirements and it was conducted in total violation of principles of natural justice, fair play, equity and conscience of any prudent man. In order to support his claim, he relied upon the following decisions:-

2004 ILLJ 224 Calcutta:

Bharat Coking Coal Limited and another Vs. Surendra Pratap Narayan Singh and Others:-

“Domestic Enquiry - Presenting Officer himself appearing as witness against delinquent - Nor list of witnesses or documents furnished to him - Held, enquiry not in conformity with principles of natural justice - Dismissal based on such enquiry, held, not sustainable”.

W.A. No.308/1996 (Kerala High Court)

State of Kerala Vs. Ranganathan:

“When a charge memo is filed, specific allegation should be made and the delinquent officer must get reasonable opportunity to deny the allegation. In the present case, the charges relate to some other fact and the final order imposing penalty described an other incident. In the present case, it is clear that the delinquent officer had no opportunity to defend his case by submitting a proper explanation. In that view of the matter, the proceeding initiated against the delinquent officer is bad in law”.

W.P. No.1386/1987 (Bombay):

Sundarilal Dhanraj Kasliwal Vs. Karmaveer Kakasaheb Wagh Sakhar Karkhana Ltd., & Ors:-

“Domestic Enquiry - Principles of Natural justice - Memo of charges - Management should indicate present nature of charges and also documents upon which charges are based - Mere offer to inspection of documents without referring to such documents in the charge sheet is improper”.

2004 ILLJ 36 Karnataka:

Aswathanarayana G.V. Vs. Central Bank of India and others:

“Domestic Enquiry - Need for clarity and precision in charge sheet - Articles of charge, held, suffered from vire of vagueness - further conduct of enquiry found to be in violation of regulations and principles of natural justice. Punishment set aside”.

1982 II LLJ 180 SC:

State of Uttar Pradesh Vs. Mohd. Sharif:

“Admittedly, in the charge sheet that was framed and served upon the plaintiff, no particulars with regard to the date and time of his alleged misconduct of having entered Government forest situated in P.C. Thatia District, Farukhabad and hunting a bull in that forest and thereby having injured the feeling of one community by taking advantage of his service and rank, were not mentioned. Not only were those particulars with regard to date and time of the incident not given but even the location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these, plaintiff was obviously prejudiced in the matter of his defence at the enquiry”.

2004 III LLJ 676 Madras:

State Bank of India Vs. Presiding Officer, Industrial Tribunal:

“Domestic enquiry - Findings of enquiry officer held vitiated, when workman not able to cope with enquiry under inevitable circumstances and not due to deliberate omission to make use of opportunities”.

14. On the other hand, the learned counsel for the respondent has contended that the petitioner was given sufficient opportunities to participate in the enquiry proceedings and since he has not participated in the enquiry proceedings, he was set *ex parte* and recorded the depositions of the management witnesses through marking the documents and based on the enquiry report, submitted by the Enquiry Officer, he was dismissed from service. In order to support his claim, he relied upon the following decisions:-

2004 LLR 682:-

Vijay Karan Singh Vs. U.P. State Road Transport Corporation and another:

“An *ex parte* enquiry cannot be vitiated when the workman has chosen to stay away from the enquiry despite notice to this effect sent to him”.

2011 LLR 673:

Chairman-cum-M.D. Coal India Ltd. Vs. Ananta Saha and Others:

“*Ex parte* proceedings of enquiry were justified against the delinquent employee since he did not state that he did not receive the notice”.

2003 LLR 790:-

S. Muthuraman and others Vs. Presiding Officer, Labour Court, Madurai and Other:

“Justification of holding - When a party fails to appear despite notice - On 6-12-1989 enquiry was not conducted but adjourned to a later date of which notice was also given to the workmen - On 18-2-1989 the workmen demanded that they should be allowed to be represented by co-workers - Enquiry was held on 21-12-1989 - The workmen had notice of the same but they did not appear - Enquiry proceedings were closed after proceeding against the workmen as *ex parte* and recording the evidence - No fault can be found in proceeding with *ex parte* enquiry”.

2011 LLR 449:

S.B.I. Vs. Hemant Kumar:

“There has been no violation of principles of natural justice in the *ex parte* enquiry as held by the Enquiry Officer who has given repeated opportunities to the delinquent employee but he has failed to participate and as such no error can be found in the enquiry as held against the delinquent”.

2007 LLR 51 (Delhi High Court)

Syndicate Bank, Zonal Office, New Delhi Vs. Sanjay Kapoor:

“The Enquiry Officer had given sufficient opportunity to the delinquent. Notices were served upon the delinquent, Enquiry Officer did not proceed against the delinquent on the very first day when he did not appear on 8th August, 1992. He adjourned the case on 21st September and then again adjourned the case to 2.30 p.m. on the same day and then to 22nd September, 1992. The Enquiry Officer was perfectly justified in proceeding *ex parte*.”

15. On perusal of records, it is seen that the petitioner was served with a charge sheet under Ex.P8 and was directed to explain in writing within 48 hours from the date of receipt of the said charge sheet and the petitioner submitted his written explanation dated 11-11-2008 and after perusal of written explanation, the respondent management by its order dated 18-11-2008 under Ex.P11 rejected the written explanation and decided to conduct the enquiry and appointed one Subramaniam as Enquiry Officer, who by his notice of enquiry dated 19-11-2008 under Ex.P13, had informed the petitioner that the enquiry will be conducted at his office on 27-11-2008 at 11.00 a.m. A perusal of records would further reveal that the petitioner by his letter

dated 22-11-2008 under Ex.P14, requested Tamil version of notice of enquiry and on 27-11-2008 the petitioner appeared in the enquiry proceedings and addressed two letters dated 27-11-2008 under Ex.P15 and Ex.P16, requesting for 15 days time and the enquiry was adjourned to 8-12-2008 and on 8-12-2008 the petitioner appeared in the enquiry and requested to have the enquiry in Cuddalore or in the factory premises and then the enquiry was adjourned to 20-12-2008 and on 20-12-2008 the petitioner has not appeared for enquiry and hence, the petitioner was set *ex parte* and the statements of the management witnesses were recorded by marking documents through them. The records would further show that the Enquiry Officer submitted a detailed enquiry report holding that the charges framed against the petitioner stands proved and the show cause memorandum with enquiry report under Ex.P30 was sent to the petitioner by the enquiry officer and the petitioner sent a letter dated 12-1-2009 under Ex.P32 to reopen the enquiry proceedings, which was rejected by the respondent and the petitioner had sought for 15 days time to submit his written explanation and the respondent had granted time till 24-1-2009 and the petitioner had submitted his written explanation and as the said explanation was not satisfied, the respondent management sent the dismissal order under Ex.P37 to the petitioner.

16. From the above, it can be seen that the Enquiry Officer had given sufficient opportunity to the petitioner and the notices were served upon the petitioner, Enquiry Officer did not proceed the enquiry against the petitioner on the very first day, as the petitioner requested further time and hence the petitioner was given four hearings, but he did not cooperate with the Enquiry Officer to conduct the enquiry and finally the petitioner was set *ex parte* and proceeded with recording of the statement of management witnesses by the Enquiry Officer and thereby the Enquiry Officer was perfectly justified in proceeding *ex parte*. Hence, I feel that the enquiry conducted by the Enquiry Officer is fair and proper and there is no violation of principles of natural justice. Further in the charge sheet under Ex.P8, the date and time have been clearly mentioned. The name of the superior has not been mentioned in Ex.P8 charge sheet. But the petitioner himself has admitted in the above incident, but has stated that the respondent staff have used the filthy language against him, which has not been proved by him, as already stated above.

17. Now this court has to see whether the punishment imposed by the respondent management is disproportionate or not.

18. The charge against the petitioner is that he abused the superior officer in a filthy language on 22-9-2008 at 7.30 p.m. According to the petitioner,

when his superior C. Saravanan had instructed him to remove the blocks in the ink-pump even without stopping the machine, he, as a person with technical experience, explained the dangers of removing the blocks in the ink-pump, but the suggestion given by him was not well received by the said Saravanan and he made derogatory remarks against him and directed him to obey his directions and he removed the cotton waste from the ink-pump without stopping the machine, due to which the ink sprinkled all over his cloth including his eyes. But the respondent has stated that on 22-9-2008 since there existed a blockade of cotton waste, the petitioner never bothered to remove the same and when it was questioned by the superior, the filthy language was used by the petitioner. From the above version of the petitioner and the respondent, it can be seen that there was an incident on 22-9-2008. The respondent has proved through their witnesses in the enquiry proceedings that the petitioner had used the filthy language. But they have not established the exact word used by the petitioner. In the above circumstances, the charge levelled against the petitioner cannot be taken as a serious one.

19. It is pertinent to refer the following decision of Rajasthan High Court at this stage:-

1988 (Vol.74) FJR 245:-

Delhi Cloth and General Mills Company Ltd. Vs. Shriram Fertilizers Karamchari Union and others:-

“Held, on the facts of the case, where the charge found proved against the workman was that he had threatened a co-worker within the factory premises on account of his not joining the other workers in their agitation and the Tribunal had given several reasons for considering the punishment of dismissal to be too harsh and incommensurate with the misconduct found proved and under section 11-A of the Act substituting therefore the penalty of stoppage of two grade increments cumulatively, that the lesser punishment substituted by the Tribunal cannot be said to be inadequate”.

In this case, there is nothing record to show that any previous adverse remark against the petitioner had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the petitioner. Hence, I am therefore of the opinion that the punishment awarded to the petitioner is shockingly disproportionate and consequently, the dismissal order passed by the respondent management under Ex.37 is set aside and the respondent is hereby directed to reinstate the petitioner into service with continuity of service. However, he is not entitled for back wages. Further the respondent is also directed to

cut one increment of the petitioner with cumulative effect, as he used the filthy language against his superior while discharging his duty. Accordingly, this point is answered.

20. In the result, the industrial dispute is partly allowed and the respondent is hereby directed to reinstate the petitioner into service with continuity of service. However, he is not entitled for back wages. Further the respondent is also directed to cut one increment of the petitioner with cumulative effect.

Typed to my dictation, corrected and pronounced by me in the open court on this the 23rd day of July 2012.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for the petitioner: Nil.

List of witnesses examined for the respondent: Nil.

List of exhibits marked for the petitioner:

- Ex.P1 — Copy of the appointment order of the petitioner, dated 17-8-1998.
- Ex.P2 — Copy of the pay slip of the petitioner
- Ex.P3 — Copy of the prescription slips
- Ex.P4 — Copy of the suspension order, dated 4-10-2008
- Ex.P5 — Copy of the letter given by the petitioner, dated 20-10-2008.
- Ex.P6 — Copy of order issued by the respondent, dated 7-11-2008.
- Ex.P7 — Copy of the letter given by the petitioner, dated 10-11-2008.
- Ex.P8 — Copy of the charge sheet, dated 8-11-2008
- Ex.P9 — Copy of the explanation reply given by the petitioner, dated 11-11-2008.
- Ex.P10 — Copy of the letter given by the petitioner, dated 14-11-2008.
- Ex.P11 — Copy of the order issued by the respondent, dated 18-11-2008.
- Ex.P12 — Copy of the letter by the petitioner to the respondent, dated 20-11-2008.
- Ex.P13 — Copy of the letter given by the Enquiry Officer, dated 19-11-2008.
- Ex.P14 — Copy of the request letter given by the petitioner, dated 22-11-2008.
- Ex.P15 — Copy of the request letter given by the petitioner, dated 27-11-2008.
- Ex.P16 — Copy of the enquiry proceedings

- Ex.P17 — Copy of the letter by respondent, dated 8-12-2008
- Ex.P18 — Copy of the letter by Shift Officer to respondent, dated 22-9-2008.
- Ex. P19 — Copy of the letter given by the petitioner to Enquiry Officer, dated 8-12-2008.
- Ex.P20 — Copy of the request letter, dated 8-12-2008 given by the petitioner.
- Ex.P21 — Copy of the letter by the petitioner to Enquiry Officer, dated 8-12-2008.
- Ex.P22 — Copy of the enquiry proceedings, dated 8-12-2008.
- Ex.P23 — Copy of the enquiry information notice, dated 12-11-2008.
- Ex.P24 — Copy of the request letter by petitioner to Enquiry Officer, dated 19-12-2008.
- Ex.P25 — Copy of the letter from Enquiry Officer
- Ex.P26 — Copy of the letter by respondent, dated 20-12-2008.
- Ex.P27 — Copy of enquiry proceedings
- Ex.P28 — Copy of letter by petitioner to Enquiry Officer, dated 26-12-2008.
- Ex.P29 — Copy of letter by petitioner to respondent, dated 3-1-2009.
- Ex.P30 — Copy of show cause memorandum, dated 12-1-2009.
- Ex.P31 — Copy of enquiry report, dated 2-1-2009
- Ex.P32 — Copy of the petition to Enquiry Officer, dated 12-1-2009.
- Ex.P33 — Copy of the letter by petitioner, dated 13-1-2009.
- Ex.P34 — Copy of the letter by Enquiry Officer, dated 15-1-2009.
- Ex.P35 — Copy of the letter by petitioner, dated 16-1-2009.
- Ex.P36 — Copy of the letter by the petitioner, dated 24-1-2009.
- Ex.P37 — Copy of the dismissal order, dated 9-2-2009.
- Ex.P38 — Copy of the failure report, dated 5-3-2010

List of exhibits marked for the respondent:

- Ex.R1 — Copy of the bio-data of the petitioner
- Ex.R2 — Copy of the enquiry issued by the respondent, dated 18-11-2008.
- Ex.R3 — Order of the respondent management, dated 25-11-2008.
- Ex.R4 — Letter regarding receipt of cheque, dated 10-12-2008.

- Ex.R5 — Enquiry notice, dated 12-12-2008
- Ex.R6 — Telegram sent to the petitioner, dated 16-12-2008
- Ex.R7 — Letter, dated 20-12-2008 sent by the respondent to Enquiry Officer
- Ex.R8 — Order of extension of suspension, dated 2-1-2009.
- Ex.R9 — Copy of the show cause memorandum along with enquiry report, dated 12-1-2009.
- Ex.R10 — Copy of the letter of the petitioner to the Enquiry Officer, dated 12-1-2009.
- Ex.R11 — Copy of the letter, dated 16-1-2009 of the petitioner.
- Ex.R12 — Copy of the order issued by the respondent, dated 20-1-2009.
- Ex.R13 — Written explanation, dated 24-1-2009 of the petitioner.
- Ex.R14 — Order, dated 29-1-2009 by the Hon'ble High Court, Madras.
- Ex.R15 — Copy of the dismissal order, dated 9-2-2009
- Ex.R16 — Industrial dispute raised by the petitioner, dated 13-3-2009
- Ex.R17 — Counter statement filed by the respondent, dated 1-4-2009.
- Ex.R18 — Reply version of the respondent, dated 15-6-2009.
- Ex.R19 — Reply of the petitioner, dated 30-7-2009
- Ex.R20 — Failure report, dated 5-3-2010
- Ex.R21 — Notification, dated 27-4-2010

T. MOHANDASS,
 II Additional District Judge,
 Presiding Officer, Labour Court,
 Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(GO. Rt. No. 236/Lab./AIL/J/2012, dated 26th December 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 22 of 2012, dated 27-9-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Super Packs, Puducherry and its workman Thiru G. Latchathipathi, S/o. Govindasamy over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the

notification issued in Labour Department's G. O. Ms. No. 20/9/Lab/L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
 Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
 Presiding Officer, Labour Court.

Thursday, the 27th day of September 2012.

I.D. No. 22/2012

G. Latchathipathi . . . Petitioner

Versus

The Managing Director,
 Super Packs, Puducherry . . . Respondent

AWARD

This industrial dispute coming on 27-9-2012 for final hearing before me in the presence of Thiru. R.T. Sankar, Advocate for the petitioner, Thiru. S. Sridhar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

The petitioner has filed a case before the Conciliation Officer on 2-4-2012 as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under section 2 A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working in the respondent company from 7-2-2008 and at the time of his appointment, he was given assurance that his service will be regularised on completion of one year. But in spite of repeated demands made by him to regularise him with the respondent company, they did not hear his demand. On 10-3-2012 there was an altercation between the petitioner and the respondent management with regard to his regularisation. Hence, the respondent orally asked the petitioner not to come for work with effect from 10-3-2012 and threatened him to immediately leave the factory premises. On 12-3-2012 he went to the respondent company for work, but he was not permitted

to work in the company, which is against the labour legislation. Hence, the present industrial dispute is filed for reinstatement with other benefits.

3. In the counter statement, the respondent has stated as follows:-

It is true that the petitioner was working in their establishment since 7-2-2008, but he left his service on his own accord on 10-3-2012. The petitioner without informing the respondent management and without giving prior notice as required by the principles of natural justice, suddenly left the job and not turned up for duty since 10-3-2012. There were four employees in the respondent establishment wherein the work of material unloading is done and the sudden leaving of service by the petitioner and his brother has caused heavy burden on the remaining two employees. The respondent tried their best to bring back the petitioner and his brother to work but their efforts failed. To reduce the work load of remaining two employees, two new employees were recruited on 4-4-2012 and there is no vacancy at present in the respondent establishment and the said establishment is very small unit and cannot burden extra persons. Hence, they pray for dismissal of the industrial dispute

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P5 were marked. On the side of the respondent, neither oral nor documentary evidence was adduced.

5. *The point for determination is :*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point :*

The main contention of the petitioner is that he was working in the respondent company from 7-2-2008 and at the time of his appointment, he was given assurance that his service will be regularised on completion of one year, but in spite of repeated demands made by him with the respondent to regularise him, they did not hear his demand and on 10-3-2012 there was an altercation between him and the respondent management with regard to his regularisation and hence, the respondent orally asked him not to come for work with effect from 10-3-2012.

7. In order to prove his case, the petitioner was examined as PW1. PW1 in his proof Affidavit has stated about the said facts and he has marked Ex.P1 to Ex.P5.

8. Though the petitioner has not produced any appointment order to show that he was working with the respondent company from 7-2-2008, the said fact has been admitted by the respondent. The petitioner has marked the copy of the E.S.I. Identity card as Ex.P3,

Copy of the Statement of Account, furnished by Indian Bank as Ex.P4 and copy of the E.S.I. Contribution Form as Ex.P5, which proves that he was an employee under the respondent company. But the respondent's contention is that the petitioner has left his service on his own accord on 10.3.2012. On the side of the respondent, no oral or documentary evidence was adduced.

9. On the side of the petitioner, the dispute raised by him before the Conciliation Officer was marked as Ex.P1. In Ex.P1 the petitioner has mentioned the contents as found in the present industrial dispute. The Conciliation Officer has sent a summons to both the petitioner and the respondent management, which has been marked as Ex.P2. But on the side of the respondent, no counter has been filed before the Conciliation Officer. In fact there is no record on file to show that whether the respondent management has participated in the conciliation or not. When the respondent has admitted that the petitioner was their employee and when they stated that the petitioner has left his service on his own accord, they should have participated in the conciliation proceedings. Even in this court also, no one was examined and no documents were marked on their side, except filing the counter and cross-examining PW1. When nothing was elicited in the cross-examination of PW1, it is the duty of the respondent to adduce oral and documentary evidence to disprove the case of the petitioner.

10. According to the respondent, the petitioner himself left his job on his own accord and the petitioner without informing the respondent and without giving prior notice, suddenly left the job and not turned up for duty since 10-3-2012. When the petitioner has left his job on his own accord, it is for the respondent to send a letter to him to call for work and produce the same before this court to prove that they tried their best to bring back the petitioner to work but their efforts failed, as stated in their counter. But no such letter was produced before this court to prove the said fact.

11. It is pertinent to refer the following decisions, which are relevant to this case:-

1988IL.L.N. Page 259:

“Industrial Dispute - Practice and procedure - Non-employment of workman - Case of employer is that workman has abandoned service - Even in case of abandonment of service employer has to give notice to workman and hold an enquiry - It is for employer to prove such abandonment - Labour Court expected to follow judicial procedure should not depend on unverified statement to come to conclusion that it was workman who had refused to resume work.”

2002 (4) L.L.N. Page 850:-

“Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable.”

12. According to the respondent, there were four employees in their establishment wherein the work of material unloading is done and the sudden leaving of service by the petitioner and his brother has caused heavy burden on the remaining two employees and to reduce the work load of remaining two employees, two new employees were recruited on 4-4-2012 and there is no vacancy at present in the respondent establishment.

13. But on perusal of copy of E.S.I. Contribution Form Ex.P5, it can be seen that the respondent management has paid the E.S.I. contribution for ten employees including the petitioner and his brother. Hence, the contention of the respondent that there were only four employees at that time was false and if any one was examined on their side, the real truth will come out and in order to screen the truth only, no one was examined on their side.

14. The petitioner was working in the respondent company for more than four years and they have extracted the work from him for all these years. But he was not given any appointment order. No notice was given to the workman for the alleged abandonment of service. Even for dismissal of service, no dismissal order was issued. Further before terminating him from service, no domestic enquiry was conducted, which is against the principles of natural justice. Hence, in order to escape from their liability to pay the statutory benefit to the petitioner, who was working for more than 240 days per year, the petitioner was terminated from service, which cannot be entertained. Hence, the petitioner has rightly come to this court for his right and consequently this industrial dispute can be allowed.

15. The learned counsel for the petitioner has submitted that the respondent is having a Branch at Bangalore and they are ready to give the job at Bangalore branch, but with the meagre salary of ₹ 4,500 per month, the petitioner cannot run his life at Bangalore and hence he prays to reinstate the petitioner in the same post at Puducherry itself.

16. The petitioner has proved through statement of account under Ex.P4 that he was earning ₹ 4,500 at the time of terminating from service. In the above circumstances, I agree with the submission made by the learned counsel for the petitioner and hence, this court

is directed the respondent to reinstate the petitioner into service in the same post, as served at the time of termination at Puducherry with continuity of service and back wages and other attendant benefits. Accordingly, this point is answered.

17. In the result, the industrial dispute is allowed and the award is passed to the effect that the respondent company/management shall reinstate the petitioner into service with continuity of service and full back wages and other attendant benefits. However in the circumstances of the case, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 27th day of September, 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for the petitioner:

PW1 — 12-9-2012 - Latchathipathy

List of witnesses examined for the respondent: Nil

List of exhibits marked for the petitioner:

Ex.P1 — Petition submitted by the petitioner before the Conciliation Officer, dated 2-4-2012.

Ex.P2 — Summons issued by the Conciliation Officer 15-5-2012.

Ex.P3 — Copy of the E.S.I. Identity Card

Ex.P4 — Copy of the Statement of Accounts

Ex.P5 — Copy of the E.S.I. Contribution Form.

List of exhibits marked for the respondent: Nil.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(GO. Rt. No. 237/Lab/AIL/J/2012, dated 26th December 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 23 of 2012, dated 27-9-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Super Packs, Puducherry and its workman Thiru. G. Mayakrishnan, S/o. Govindasamy over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the Notification issued in Labour Department's G.O.Ms.No.20/9/Lab/L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT, AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
Presiding Officer, Labour Court.

Thursday, the 27th day of September 2012

I.D. No. 23/2012

G. Mayakrishnan .. Petitioner

Versus

The Managing Director,
Super Packs, Puducherry. . . Respondent

This industrial dispute coming on 27-9-2012 for final hearing before me in the presence of Thiru R.T. Sankar, Advocate for the petitioner, Thiru S. Sridhar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

The petitioner has filed a case before the Conciliation Officer on 2-4-2012 as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under section 2 A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working in the respondent company from 7-2-2008 and at the time of his appointment, he was given assurance that his service will be regularised on completion of one year. But in spite of repeated demands made by him to regularise him with the respondent company, they did not hear his demand. On 10-3-2012 there was an altercation between the petitioner and the respondent management with regard to his regularisation. Hence, the respondent orally asked the petitioner not to come for work with effect from 10-3-2012 and threatened him to immediately leave the factory premises. On 12-3-2012, he went to the respondent company for work,

but he was not permitted to work in the company, which is against the labour legislation. Hence, the present industrial dispute is filed for reinstatement with other benefits.

3. In the counter statement, the respondent has stated as follows:-

It is true that the petitioner was working in their establishment since 7-2-2008, but he left his service on his own accord on 10-3-2012. The petitioner without informing the respondent management and without giving prior notice as required by the principles of natural justice, suddenly left the job and not turned up for duty since 10-3-2012. There were four employees in the respondent establishment wherein the work of material unloading is done and the sudden leaving of service by the petitioner and his brother has caused heavy burden on the remaining two employees. The respondent tried their best to bring back the petitioner and his brother to work but their efforts failed. To reduce the work load of remaining two employees, two new employees were recruited on 4-4-2012 and there is no vacancy at present in the respondent establishment and the said establishment is very small unit and cannot burden extra persons. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P5 were marked. On the side of the respondent, neither oral nor documentary evidence was adduced.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point:*

The main contention of the petitioner is that he was working in the respondent company from 7-2-2008 and at the time of his appointment, he was given assurance that his service will be regularised on completion of one year, but in spite of repeated demands made by him with the respondent to regularise him, they did not hear his demand and on 10-3-2012 there was an altercation between him and the respondent management with regard to his regularisation and hence, the respondent orally asked him not to come for work with effect from 10-3-2012.

7. In order to prove his case, the petitioner was examined as PW1. PW1 in his proof affidavit has stated about the said facts and he has marked Ex.P1 to Ex.P5.

8. Though the petitioner has not produced any appointment order to show that he was working with the respondent company from 7-2-2008, the said fact has been admitted by the respondent. The petitioner has marked the copy of the E.S.I. Identity card as Ex.P3. Copy of the statement of account, furnished by Indian Bank as Ex.P4 and copy of the E.S.I. Contribution Form as Ex.P5, which proves that he

was an employee under the respondent company. But the respondent's contention is that the petitioner has left his service on his own accord on 10-3-2012. On the side of the respondent, no oral or documentary evidence was adduced.

9. On the side of the petitioner, the dispute raised by him before the Conciliation Officer was marked as Ex.P1. In Ex. P1 the petitioner has mentioned the contents as found in the present industrial dispute. The Conciliation Officer has sent summons to both the petitioner and the respondent management, which has been marked as Ex.P2. But on the side of the respondent, no counter has been filed before the Conciliation Officer. In fact there is no record on file to show that whether the respondent management has participated in the conciliation or not. When the respondent has admitted that the petitioner was their employee and when they stated that the petitioner has left his service on his own accord, they should have participated in the conciliation proceedings. Even in this court also, no one was examined and no documents were marked on their side, except filing the counter and cross-examining PW1. When nothing was elicited in the cross-examination of PW1, it is the duty of the respondent to adduce oral and documentary evidence to disprove the case of the petitioner.

10. According to the respondent, the petitioner himself left his job on his own accord and the petitioner without informing the respondent and without giving prior notice, suddenly left the job and not turned up for duty since 10-3-2012. When the petitioner has left his job on his own accord, it is for the respondent to send a letter to him to call for work and produce the same before this court to prove that they tried their best to bring back the petitioner to work but their efforts failed, as stated in their counter. But no such letter was produced before this court to prove the said fact.

11. It is pertinent to refer the following decisions, which are relevant to this case:-

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13. But on perusal of copy of E.S.I. Contribution Form Ex.P5, it can be seen that the respondent management has paid the E.S.I. contribution for ten employees including the petitioner and his brother. Hence, the contention of the respondent that there were only four employees at that time was false and if any one was examined on their side, the real truth will come out and in order to screen the truth only, no one was examined on their side.

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15. The learned counsel for the petitioner has submitted that the respondent is having a branch at Bangalore and they are ready to give the job at Bangalore branch, but with the meagre salary of ₹ 4,500 per month, the petitioner cannot run his life at Bangalore and hence he prays to reinstate the petitioner in the same post at Puducherry itself.

16. The petitioner has proved through statement of account under Ex.P4 that he was earning ₹4,500 at the time of terminating from service. In the above circumstances, I agree with the submission made by the learned counsel for the petitioner and hence, this court is directed the respondent to reinstate the petitioner into service in the same post, as served at the time of termination at Puducherry with continuity of service and back wages and other attendant benefits. Accordingly, this point is answered.

17. In the result, the industrial dispute is allowed and the award is passed to the effect that the respondent company/management shall reinstate the petitioner into service with continuity of service and full back wages and other attendant benefits. However in the circumstances of the case, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 27th day of September, 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for the petitioner:

PW. 1 — 12-9-2012— Mayakrishnan.

List of witnesses examined for the respondent: Nil

List of exhibits marked for the petitioner:

Ex.P1 — Petition submitted by the petitioner before the Conciliation Officer dated 2-4-2012.

Ex.P2 — Summons issued by the Conciliation Officer 15-5-2012.

Ex.P3 — Copy of the E.S.I. Identity Card

Ex.P4 — Copy of the statement of accounts

Ex.P5 — Copy of the E.S.I. Contribution Form

List of exhibits marked for the respondent : Nil.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam.Cell/2012-13.

Puducherry, the 21st December 2012.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate, bearing Register Number 556245 of March 2008 in respect of R. Rajamani, an ex-pupil of Sri V. Ramamurthy Government High School, Maducarai is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

R. KALAISELVAN,
Chief Educational Officer.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam.Cell/2012-13.

Puducherry, the 21st December 2012.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate, bearing Serial Number SEC 0606562 under Register Number 482916 of March 2003 in

respect of N. Jeevanantham, an ex-pupil of Government High School, Archivakpet is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

R. KALAISELVAN,
Chief Educational Officer.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam.Cell/2012-13.

Puducherry, the 21st December 2012.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate, bearing Register Number 512073 of March 2006 in respect of M. Iniyavan, an ex-pupil of Kalaignar Karunanidhi Government Higher Secondary School, Kalitheerthalkuppam is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

R. KALAISELVAN,
Chief Educational Officer.

GOVERNMENT OF PUDUCHERRY
LAW DEPARTMENT

(G.O. Ms. No. 41/2012-LD, dated 24th December 2012)

ORDER

The Lieutenant-Governor, Puducherry is pleased to appoint Thiru R. Syed Mustafa, Government Pleader for Puducherry at CAT, Madras Bench, as also the Government Pleader, Service Matters (Writs) for Puducherry at High Court, Madras, in addition to Thiru Mani Sundargopal, Government Pleader, Service Matters (Writs), High Court, Madras until further orders.

(By order of the Lieutenant-Governor)

T. T. GAMDIK,
Law Secretary to Government.